

EX 86-1031X

**Office of Legislative Liaison**  
Routing Slip

TO:	ACTION	INFO
1. D/OLL		X
2. DD/OLL		X
3. Admin Officer		
4. Liaison	X	
5. Legislation		X
6. Ch/Liaison		
7. DCh/Liaison		X
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SUSPENSE

14 MAY 86  
Date

Action Officer:	
Remarks:	Legislation

13 MAY 86  
Name/Date

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**EXECUTIVE SECRETARIAT**  
**ROUTING SLIP**

TO:

		ACTION	INFO	DATE	INITIAL
1	DCI		X		
2	DDCI		X		
3	EXDIR		X		
4	D/ICS				
5	DDI		X		
6	DDA				
7	DDO				
8	DDS&T				
9	Chm/NIC				
10	GC		X		
11	IG				
12	Compt				
13	D/OLL	X			
14	D/PAO				
15	D/PERS				
16	VC/NIC				
17	NIO/CT		X		
18	C/CT OPS/DO		X		
19					
20					
21					
22					
SUSPENSE		14 MAR 86 Date			

Remarks TO 13: STATE LEGAL HAS ASKED THAT WE COORDINATE ON THE DRAFT VP RESPONSE TO SENATOR DURENBERGER'S 20 FEB LETTER BY 13 MARCH. PLEASE WORK WITH OGC TO PROVIDE COORDINATED COMMENTS. PROVIDE COPY TO ES.

Executive Secretary  
12 MARCH 86

Date

TRANSMITTAL SLIP		DATE	12 March 86
TO:		Executive Secretary	
ROOM NO.	BUILDING		
REMARKS:			
Per our discussion.			
FROM:			
ROOM NO.	BUILDING		
3S11			
FORM NO.		REPLACES FORM 800 WHICH MAY BE USED.	
1 FEB 86 241		(47)	

Executive Registry  
 86-1031x

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Reg 7 Pages. plus cover

12 MARCH 1986

BRS.

CPAS OPS CNTR



United States Department of State

*The Legal Advisor*

Washington, D.C. 20520

March 11, 1986

Dear Mr. Chairman:

I recently advised your Chief Counsel, Gary Chase, on behalf of the Executive Branch, that we would respectfully have to decline his invitation to members of the staffs of various agencies to participate in a meeting on February 20 to discuss the establishment of a new system of notification and consultation on counter-terrorist operations.

Our decision not to participate reflects in no way any lack of regard for the Committee, or any lack of sincere desire to work with the Committee to ensure the greatest possible cooperation in the discharge of our respective responsibilities.

However, we believe that current procedures and statutory provisions relating to Congressional notification and consultation are adequate for this purpose, and that the establishment of new procedures with respect to counter-terrorist operations would be unnecessary and counterproductive. I know that you are deeply concerned with protecting secrecy in sensitive actions. The planning and execution of counter-terrorist operations is a highly sensitive area, and we would be seriously concerned about any procedures which would increase the risk of unauthorized disclosures that could severely threaten the success of such operations and the safety of innocent persons.

You suggested in your remarks at Johns Hopkins last October that the formal requirements of the War Powers Resolution and the Intelligence Oversight Act tend to produce "legal gameship" and can inhibit rather than encourage useful cooperation between the two branches: we agree, but are seriously concerned that a new formal framework for counter-terrorism operations would have just this effect in an even more sensitive area.

The Honorable  
David F. Durenberger,  
Chairman, Senate Select  
Committee on Intelligence,  
United States Senate.

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By the same token, we disagree with your suggestion that a new framework must be adopted because there may be situations in which formal consultations and reports are not required by either the War Powers Resolution or the Intelligence Oversight Act; on the contrary, we believe that Congress acted appropriately in drafting these statutes so that such requirements would not be imposed in all cases. In the counter-terrorism area, the Executive Branch must retain the flexibility to judge on a case-by-case basis how to balance the strong desirability of cooperation with Congress with the imperative demands of security and protection of innocent persons endangered by terrorist actions.

We certainly do not wish to close the door to a continuing dialogue between policy-makers of the two branches on this or any other subject of mutual interest. We should not, however, continue such a dialogue on these sensitive matters through large meetings of staff members from many different agencies and committees, conducted in a relatively formal manner with transcripts and formal agendas. On the other hand, I would be pleased to arrange for a more informal discussion involving appropriate policy-level officials of the Executive Branch if you would find that useful. Please let me know if you would like me to pursue such an arrangement.

Sincerely,

Abraham D. Sofaer  
The Legal Adviser

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DAVID L. BENDER, MINNESOTA, CHAIRMAN  
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## United States Senate

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SELECT COMMITTEE ON INTELLIGENCE  
WASHINGTON, DC 20510

#86-578

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ROBERT C. BYRD, WEST VIRGINIA, EX OFFICIO

STANLEY F. MCMAHON, STAFF DIRECTOR  
ERIC D. NEVISON, MINORITY STAFF DIRECTOR

February 20, 1986

The Honorable George Bush  
Vice President of the United States  
The White House  
Washington, D.C. 20500

Dear Mr. Vice President:

As you know, the Select Committee on Intelligence has for some time been concerned that the statutory frameworks provided by the War Powers Resolution and Intelligence Oversight legislation are not conducive to productive congressional notification and consultation in situations involving the employment of special military operations forces in hostage rescue efforts or in preemptive or retaliatory counterterrorist operations. We have been especially concerned that considerations regarding the potential applicability of the War Powers or Intelligence Oversight frameworks could actually impact adversely on U.S. efforts to counter terrorism by causing operational decisions to be influenced by oversight considerations.

The Committee's Counsels accordingly have been engaged in informal consultations with knowledgeable Executive and Legislative Branch officers, and the issue was explored in one of the issue papers which the Committee forwarded to your Task Force on Combatting Terrorism. We were pleased that your Task Force report specifically noted (page 48) that "it would be prudent to continue the informal discussions [between the Congress and the Executive Branch] to clarify reporting and oversight requirements." Another meeting to do precisely that was scheduled for February 20, 1986. Thus, we were dismayed to be told that our Chief Counsel had been informed by the State Department Legal Adviser on February 19th that the Administration had determined to discontinue its participation in our series of informal consultations.

We certainly hope that this decision will be reconsidered. In the meantime, because we consider the issue to be an important one, we have instructed our staff to proceed as best they can and to prepare appropriate

The Honorable George Bush  
February 20, 1986  
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recommendations, including legislative proposals, which the Committee can pursue. Mr. Vice President, we continue to believe that this effort is best undertaken on a cooperative basis that would allow maximum Executive Branch participation throughout the process. We hope that you will exert your influence to ensure that your Task Force's sound recommendation in this regard is adhered to.

Sincerely,



Dave Durenberger  
Chairman



Patrick Leahy  
Vice Chairman



ER 86-1031X

Executive Registry

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March 86  
SecretaryOffice of Legislative Liaison  
Routing Slip

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1. D/OLL		x
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SUSPENSE

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12 MARCH 1986

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